

530 New

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name MORRIS MARLON
(Last) (First) (Initial)

Prisoner Number P-96526

Institutional Address CSP-SACRAMENTO

P.O. Box 290066, Represa, CA 95671-0066

FILED

APR 17 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARLON MORRIS,

(Enter the full name of plaintiff in this action.)

vs.

J. WALKER, Warden, et al.

(Enter the full name of respondent(s) or jailor in this action)

CV 08 -2005

Case No. _____
(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

E-filing

**PJH
(PR)**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

CV 08-2005-277

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SUPERIOR COURT COUNTY OF SAN FRANCISCO

Court Location

- (b) Case number, if known Sup. #175064

- (c) Date and terms of sentence October 6, 2000

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes x No _____

Where?

Name of Institution: CSP-SACRAMENTO, Represa, CA 95671.

Address: P.O. Box 290066, Represa, CA 95671.

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Please see attached petition exhausted in State Court
Exhibit A.

3. Did you have any of the following?

Arraignment: Yes x No

Preliminary Hearing: Yes x No

Motion to Suppress: Yes _____ No _____

4. How did you plead?

Guilty _____ Not Guilty x Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury x Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes _____ No _____

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes x No

(b) Preliminary hearing Yes x No

(c) Time of plea Yes _____ No _____

(d) Trial Yes x No

(e) Sentencing Yes y No

(f) Appeal Yes _____ No _____

(g) Other post-conviction proceeding Yes _____ No _____

8. Did you appeal your conviction? Yes _____ No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes _____ No _____

Year: _____ Result: _____

Supreme Court of California Yes _____ No _____

Year: _____ Result: _____

Any other court Yes _____ No _____

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes _____ No _____

2 (c) Was there an opinion? Yes _____ No _____

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes _____ No _____

5 If you did, give the name of the court and the result:

6 _____

7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes x No x

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: Supreme Court

19 Type of Proceeding: Petitioner for Writ of Habeas Corpus

20 Grounds raised (Be brief but specific):

21 a. See pages 6 and 6.1 attached hereto.

22 b. See Order from supreme court denying relief next page.

23 c. _____

24 d. _____

25 Result: denied Date of Result: 3/12/08

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

1 a. _____
 2 b. _____
 3 c. _____
 4 d. _____
 5 Result: _____ Date of Result: _____

6 III. Name of Court: _____
 7 Type of Proceeding: _____
 8 Grounds raised (Be brief but specific):
 9 a. _____
 10 b. _____
 11 c. _____
 12 d. _____
 13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____
 15 Type of Proceeding: _____
 16 Grounds raised (Be brief but specific):
 17 a. _____
 18 b. _____
 19 c. _____
 20 d. _____
 21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No ☒ _____

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

need more space. Answer the same questions for each claim.

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

Claim One: PETITIONER CONTENTS THAT THE STATE COURTS HAS DEPRIVED HIM OF THE RIGHT TO BE RESENTENCED PURSUANT TO THE U.S. SUPREME COURT'S
(See next page 6.1) See attached exhausted petition from state courts

Claim Two:

Supporting Facts:

Claim Three:

Supporting Facts:

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

RULING THAT CALIFORNIA'S (DSL) IS UNCONSTITUTIONAL, THE STATE COURTS HAVE VIOLATED THE FEDERAL CONSTITUTION'S FOURTEENTH AMENDMENT BE REFUSING TO RESENTENCE PETITIONER TO THE TERM.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Cunningham v. California, 549 U.S. ____ (2007); Blakley v. Washinton,

5 542 U.S. 296 (June 24, 2004); and Appendi v. New Jersey, 530 U.S.

6 466 (June 26, 2000). See page #3 of attached petition to Court of
7 Appeal.

8 Do you have an attorney for this petition?

Yes____ No x

9 If you do, give the name and address of your attorney:
10 _____

11 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
12 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

13 Executed on 4-20-08

Marden Mee

14 Date

Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

S156650

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re MARLON MORRIS on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

MAR 12 2008

Frederick K. Ohlrich Clerk

Deputy

Moreno, J., was absent and did not participate.

GEORGE

Chief Justice

MC-275

Name MARLON MORRISAddress CSP-SACRAMENTOP.O. Box 290066Repres, CA 95671-0066CDC or ID Number P-96526SUPREME COURT

STATE OF CALIFORNIA

PETITION FOR WRIT OF HABEAS CORPUS

MARLON MORRIS

Petitioner

vs.

No. _____

(To be supplied by the Clerk of the Court)

ON HABEAS CORPUS

(Petitioner relies on P.C. § 1258)

Respondent

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

MC-275

This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: MARLON MORRIS
2. Where are you incarcerated? CSP-SACRAMENTO, NEW FOLSOM, Represa, CA 95671-0066
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

(See attached Petition, (Superior Court No. 175064), (Court of Appeal No. A118974)

listed as exhibit A.))

- b. Penal or other code sections: "

- c. Name and location of sentencing or committing court: "

"

- d. Case number: "

- e. Date convicted or committed: "

- f. Date sentenced: "

- g. Length of sentence: "

- h. When do you expect to be released? "

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

"

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

MC-275

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

(See attached Petition exhibit A)

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

(See Petition exhibit A)

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

"

7. Ground 2 or Ground _____ (if applicable):

MC-275

a. Supporting facts:

b. Supporting cases, rules, or other authority:

MC-275

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

(See attached Petition exhibit A).

b. Result

c. Date of decision:

d. Case number or citation of opinion, if known:

e. Issues raised: (1)

(2)

(3)

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result See petition exhibit A.

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

"

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

"

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15. MC-275

13. a. (1) Name of court: See Petition exhibit A.

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) See exhibit A.

(b) _____

(4) Result (Attach order or explain why unavailable): See exhibit B,

(5) Date of decision: "

"

b. (1) Name of court: _____

(2) Nature of proceeding: "

(3) Issues raised: (a) "

(b) "

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: 9/06/07.

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

"

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

"

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This court has original jurisdiction.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 9-24-07

► Marlon Morris
(SIGNATURE OF PETITIONER)

MC-275

Name MARLON MORRISAddress CSP-SACRAMENTOP.O. Box 290066Represa, CA 95671-0066CDC or ID Number P-96526CALIFORNIA COURT OF APPEALFIRST APPELLATE DISTRICT

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

IN RE MARLON MORRIS

Petitioner

vs.

ON HABEAS COUPUS

Respondent

No. _____

(To be supplied by the Clerk of the Court)

(Petitioner relies on P.C. § 1258)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page one of six

This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

Your name: MARLON MORRIS

Where are you incarcerated? CSP-SAC., P.O. Box 290066, Represa, CA 95671-0066

Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

See attached habeas petition form superior court, No. 5597 (2007) exhibit A.

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court: _____

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court? ☐ Yes. ☐ No. If yes, state the attorney's name and address:

What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

3. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PETITIONER CONTENDS THAT SUPERIOR COURT'S ORDER OF JULY 23, 2007, ERRED FOR NOT STRIKING THE UPPER TERM SENTENCE AND RE-SENTENCE PETITIONER TO THE MID-TERM OF FIVE YEARS.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner believes that the superior court's decision is inconsistent with law as defined in *Cunningham vs. California*, supra, 549 U.S. ____ 2007 because *Cunningham's* ruling was predicated upon *Blakley v. Washington*, 542 U.S. 296 (June 24th, 2004), and *Appendi v. New Jersey*, 530 U.S. 466 (June 26, 2000). Thus, because *Cunningham*, supra, relies on *Blakley*, supra, and because *Blakley* applies the rule annouced in *Appendi*, supra, a prisoner whose conviction became final after *Appendi* but before *Blakley* can still present a claim under *Cunningham* based on the fact that *Cuninham* is "dictated" by *Appendi*, and therefore the *Teague's* prohibition on "new" rules being applied on habeas corpus. Petitioner is entitled to the relief requested in the attached petition, exhibit A, supra.

See copy of superior cpurt's order denying relief attached as exhibit B.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

"

Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

See attached petition exhibit A

b. Result "

c. Date of decision:

d. Case number or citation of opinion, if known:

e. Issues raised: (1)

"

(2)

(3)

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

"

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

This petition is predicated upon a recent U.S. Supreme Court ruling of

January 2007.

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.
13. a. (1) Name of court: See attached pet. exhibit A.
- (2) Nature of proceeding (for example, "habeas corpus petition"): _____
- (3) Issues raised: (a) "
- (b) _____
- (4) Result (Attach order or explain why unavailable): _____
- (5) Date of decision: _____
- b. (1) Name of court: _____
- (2) Nature of proceeding: _____
- (3) Issues raised: (a) _____
- (b) _____
- (4) Result (Attach order or explain why unavailable): _____
- (5) Date of decision: _____
- c. For additional prior petitions, applications, or motions, provide the same information on a separate page.
14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:
N/A
15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)
See petition attached as exhibit A.
16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known: _____
17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain: _____
18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
This is the appropriate court for redress.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 8-31-07

Monica M. W. W.
(SIGNATURE OF PETITIONER)

PETITION FOR WRIT OF HABEAS CORPUS FROM SUPERIOR COURT
NO. 5597 EXHIBIT A.

MC-275

Name MARLON MORRISAddress CSP-SACRAMENTOP.O. Box 290066Represa, CA 95671-0066CDC or ID Number P-96526

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

(Court)

MARLON MORRIS,

Petitioner

vs.

J. WALKER, Warden, et al.

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

(Petitioner relies on P.C. § 1258)

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☐ Other (specify): _____

1. Your name: MARLON MORRIS
2. Where are you incarcerated? CSP-SAC., P.O. Box 290066, Represa, CA 95671-0066.
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Carjacking; Robbery; Use of Weapon, and one Prior Conviction For Robbery.

(§§ 215, 212.5; 12022, subd. (b); 667 (a)(1),(d),(e); 1170.12, subd. (b),(c);

1192.7, subd. (c),(19).

- b. Penal or other code sections: _____

- c. Name and location of sentencing or committing court: SUPERIOR COURT, COUNTY OF SAN FRANCISCO,
SAN FRANCISCO, CA 94102.

- d. Case number: 175064/843125.

- e. Date convicted or committed: Oct. 6th, 2000.

- f. Date sentenced: "

- g. Length of sentence: 27 years and 4-months.

- h. When do you expect to be released? _____

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

JEFF BROWN, P.D.

San Francisco, California.

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

3. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PETITIONER CONTENDS THAT TRIAL COURT MUST STRIKE THE NINE YEARS TERM IMPOSED AT SENTENCING AND RE-SENTENCE PETITIONER TO THE MID TERM OF FIVE YEARS BASED ON THE U.S. SUPREME COURT HOLDING THAT CALIFORNIA'S DETERMINATE SENTENCING LAW (DSL) IS UNCONSTITUTIONAL. *Cunningham v. California*, 549 U.S. (2007).

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

In the case at bar the trial court did not permit the jury to consider the aggravating factors for the purpose of increasing the term beyond the medium term of five years, the judge alone found aggravating factors after discharging the jury, the court imposed the upper term of nine years after it determined aggravating factors in this case. The Court: ("Therefore, for court one, the principal term car-jacking, a violation of Penal Code section 215 (a), nine years in State Prison.") (R.T. 28:15-17). Attached hereto is copies of Reporter's Transcript pages 1, 26-32).

Petitioner believe he is entitled to relief based upon the ruling in *Cunningham v. California*, supra, 549 U.S. (2007).

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Cunningham v. California, 549 U.S. (2007; Cal. Const. art. 1, § 7, and the (Sixth and Fourteenth Amendments to the United States Constitution.)

PRAYER FOR RELIEF

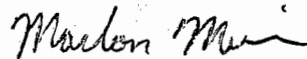
Petitioner is without remedy save by writ of habeas corpus.

WHEREFORE, Petitioner prays the court:

1. issue a writ of habeas corpus or show cause as to why writ should not issue;
2. declare the rights of the parties;
3. void the current Abstract of Judgment and issue another Abstract of Judgment nunc pro tunc reflecting the term of five years;
- 4 order an evidentiary hearing;
5. appoint counsel to properly represent this claim, and
6. grant any other relief the court deem proper.

DATED: May 17, 2007

Respectfully submitted



MARLON MORRIS
Petitioner Pro Se

7. Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):
COURT OF APPEAL, FIRST APPELLATE DIST.

b. Result: AFFIRMED.

c. Date of decision: _____

d. Case number or citation of opinion, if known: A093099.

e. Issues raised: (1) (See next page 5.1)

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

RENEE E. TORRES, Staff Attorney, State Bar No. 85328, 730 Harrison St., San Francisco,
CA 94107.

9. Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

This habeas petition is predicated upon the recent U.S. Supreme Court ruling
in the case of California v. Cunningham v. California, 549 U.S. ____ (2007).

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

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12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

This petition is timely filed based upon the U.S. Supreme Court ruling the California DSL is unconstitutional. Decision came down January 2007.

6. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

7. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

8. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This Court has jurisdiction in this matter.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: May 17, 07

► Markus Moris
 (SIGNATURE OF PETITIONER)

In re Marlon Morris, On Habeas Corpus
(Superior Court No. 175064/843125. (2000))

REPORTER'S TRANSCRIPT OF OCTOBER 6, 2000, SAN FRANCISCO COUNTY
EXHIBIT A.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT NO. 27

- - - 000 - - -

THE PEOPLE OF THE STATE
CALIFORNIA,

PLAINTIFF,

VS.

MARLON A. MORRIS,

DEFENDANT.

NO. SUP. 175064
CASE NO. 1842125

REPORTER'S TRANSCRIPT OF PROCEEDINGS

OCTOBER 6, 2000

BEFORE HONORABLE RICHARD KRAMER, JUDGE

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

TERRENCE HALLINAN
DISTRICT ATTORNEY
BY: ROBERT GORDON
ASSISTANT DISTRICT ATTORNEY

FOR DEFENDANT:

JEFF F. BROWN
PUBLIC DEFENDER
BY: FRANK BRASS
DEPUTY PUBLIC DEFENDER

REPORTED BY: ANN SOLIMAN MENDOZA
CSR NO. 6812

1 BATTERY WITH SERIOUS BODILY INJURY. HE'S COMMITTING FELONY
2 ROBBERY SECOND DEGREE, MISDEMEANOR FORGERY, DRUNK WITH ALCOHOL,
3 DUI WITH ALCOHOL OR DRUGS, ALL THIS WHILE HIS CHILD IS BORN AND
4 EXISTS. I THINK IT WOULD BE FOOLISHNESS FOR ME TO THINK THAT
5 BY MY ACT OF SOMEHOW SAYING TO MR. MORRIS, I'LL GIVE YOU A
6 CHANCE THAT THAT WOULD SOMEHOW SHAKE HIM INTO CHANGING HIS
7 WAYS.

8 WHEN THE PRESENCE OF THREE -- WHAT I CONSIDER TO BE
9 EXTREMELY SINCERE AND VERY KIND AND PATIENT PEOPLE IN HIS LIFE
10 PLUS THE BIRTH OF HIS CHILD HAD NO AFFECT ON HIM. I HAVE TO
11 CONCLUDE FROM THAT THAT DESPITE, I THINK, THE SINCERITY OF THE
12 THREE WOMEN WHO CAME TO DESCRIBE A DIFFERENT MR. MORRIS TO ME,
13 THE MR. MORRIS THAT I'M DEALING WITH IS NOT CAPABLE OF CHANGING
14 HIS WAYS. IF YOUR BABY CAN'T DO IT, I CAN'T DO IT.

15 DEFENSE COUNSEL ALSO ARGUED THAT THE PEOPLE ARE TO BLAME
16 FOR THIS SITUATION BECAUSE THE PEOPLE TOOK A HARD-NOSED
17 POSITION IN NEGOTIATIONS HERE AND INVOKED THEIR ABSOLUTE RIGHT
18 TO REFUSE TO PLEA BARGAIN AND INSTEAD INSISTED ON A SUBSTANTIAL
19 PRISON TERM. I CAN'T FAULT THE PEOPLE FOR THAT. THEY'RE
20 CHARGED WITH THAT RESPONSIBILITY.

21 MR. BRASS: THE MAXIMUM PRISON TERM.

22 THE COURT: MAXIMUM PRISON TERM. THEY ARE STILL CHARGED
23 WITH THE RESPONSIBILITY OF DOING WHAT THEY THINK IS RIGHT. I
24 CAN'T SAY ANY CASE THAT RESULTS IN A CONVICTION IS THE FAULT OF
25 THE PEOPLE FOR NOT SETTLING THE CASE. THEREFORE, I HAVE
26 THOUGHT LONG AND HARD ABOUT THIS CASE. I AM SELECTING AS THE
27 PRINCIPAL TERM, COUNT ONE CARJACKING A VIOLATION OF PENAL CODE
28 SECTION 215(A), WHICH THE DEFENDANT WAS FOUND GUILTY OF ON

1 MARCH 3RD -- MARCH 14TH, THE YEAR 2000. THAT'S THE PRINCIPAL
2 TERM. THAT IS THREE, FIVE, OR NINE YEARS IN PRISON -- THREE,
3 FIVE, OR NINE.

4 IN DECIDING TO IMPOSE, THE MITIGATED, MID TERM,
5 AGGRAVATED TERM, I AM TO CONSIDER THE NATURE OF THE CRIME AND
6 NATURE OF THE DEFENDANT.

7 I FIND THAT THERE ARE CONCEPTUALLY SOME CIRCUMSTANCES IN
8 MITIGATION. I DO SYMPATHIZE WITH THE DEFENDANT'S PROBLEMS IN
9 HIS UP BRINGING. I AM MINDFUL OF THE FACT THAT DRUGS CAN MAKE
10 PEOPLE DO THINGS THAT THEY MIGHT NOT OTHERWISE BE DISPOSED TO
11 DOING. BUT MR. MORRIS CAN'T RELY ON THAT EXCUSE FOREVER. AND
12 AS I SAID, IF THE BIRTH OF A CHILD CAN'T SHAKE YOU OUT OF A BAD
13 CHILDHOOD AND A DRUG PROBLEM, THEN I THINK THERE'S NO LONGER A
14 CIRCUMSTANCE IN MITIGATION, RATHER A FACT OF YOUR LIFE.

15 ON THE OTHER HAND, THERE ARE SUBSTANTIAL CIRCUMSTANCES
16 IN AGGRAVATION. THE DEFENDANT HAS A LENGTHY CRIMINAL RECORD OF
17 INCREASING VIOLENCE, CULMINATING IN THREE, WHAT I CONSIDER TO
18 BE, VERY SERIOUS CRIMES IN THIS CASE. ALL OF WHICH SEEM
19 PARTICULARLY VIOLENT TO ME. I DON'T AGREE THAT ANYBODY WHO'S
20 BEEN CARJACKED RECOVERS QUICKLY BECAUSE THE CARJACKER WAS NOT
21 IN HIS PRESENCE FOR VERY LONG. I CERTAINLY DO NOT BELIEVE THAT
22 A WOMAN ON HER WAY TO CHURCH, WHO WAS ACCOSTED WITH A KNIFE HAS
23 HER PURSE TAKEN, RECOVERS QUICKLY SIMPLY BECAUSE SHE HASN'T
24 BEEN CUT.

25 AND I DON'T BELIEVE THAT A WOMAN WHO'S PURSE WAS TAKEN,
26 WHO HAS THE BRAVERY OR FOOLISHNESS TO JUMP OUT TO BE CHASED BY
27 A PERPETRATOR AND BE DRAGGED BY A CAR RECOVERS QUICKLY, SIMPLY
28 BECAUSE SHE WAS FORTUNATE ENOUGH NOT TO SUFFER SERIOUS

1 INJURIES. I THINK ALL THREE OF THOSE ARE VERY SERIOUS CRIMES,
2 WHICH ARE COMMITTED AT RANDOM AGAINST CITIZENS WHO HAD AN
3 ABSOLUTE RIGHT TO EXPECT THAT WHERE THEY WERE WOULD BE SAFE.

4 THIS ISN'T SOMEBODY WANDERING LATE A NIGHT IN THE
5 TENDERLOIN WHO GETS ROBBED. THIS ISN'T SOMEBODY HANGING AROUND
6 TO WATCH DRUG SALES AND GETS HIT ON HER HEAD. THIS IS SOMEBODY
7 WALKING OUT OF HER HOUSE, SOMEBODY GOING TO CHURCH, SOMEBODY
8 WAITING FOR HIS WIFE TO COME TO A PARKING LOT RIGHT AFTER WORK,
9 RIGHT IN THE VERY BUSY PART OF SAN FRANCISCO. THIS IS EXACTLY
10 THE TYPE OF CRIME THAT MAKES CITIZENS AFRAID TO LEAD THE NORMAL
11 LIVES THEY'RE ENTITLED TO LEAD. I THINK THE NATURE OF THE
12 CRIMES ARE PARTICULARLY SERIOUS HERE AND PARTICULARLY VIOLENT
13 HERE. AND THEREFORE, THE CIRCUMSTANCES IN AGGRAVATION ARE
14 SUFFICIENT TO IMPOSE THE AGGRAVATED TERM.

15 THEREFORE, FOR COUNT ONE, THE PRINCIPAL TERM CARJACKING,
16 A VIOLATION OF PENAL CODE SECTION 215(A), NINE YEARS IN STATE
17 PRISON. THE AGGRAVATED TERM'S FOR THE REASONS I STATED,
18 DOUBLED AS A STRIKE UNDER PENAL CODE SECTION 667(E) 18 YEARS IN
19 STATE PRISON. COUNT TWO, ROBBERY, A VIOLATION OF PENAL CODE
20 SECTION 212.5 MID TERM OF THREE YEARS IS ONE-THIRD THE MID
21 TERM, PLUS ONE-THIRD THE ENHANCEMENT OF THE USE OF A KNIFE
22 UNDER PENAL CODE SECTION 12022(B)(1), WHICH THEN BECOMES ONE
23 YEAR STATE PRISON FOR THE ROBBERY, FOUR MONTHS STATE PRISON FOR
24 THE KNIFE CONSECUTIVE. COUNT THREE ROBBERY, A VIOLATION OF
25 PENAL CODE SECTION 212, ONE-THIRD THE MID TERM, WHICH IS ONE
26 YEAR, THE SENTENCE AND THE ENHANCEMENT ON COUNT TWO IS DOUBLED
27 UNDER PENAL CODE SECTION 667(E) AS IS THE SENTENCE ON COUNT 3
28 FOR THE PRIOR PRISON TERM. WHAT'S THE CODE SECTION, I WROTE IT

1 DOWN?

2 MR. GORDON: 667(A).

3 THE COURT: 667(A) MANDATORY FIVE YEARS CONSECUTIVE
4 STATE PRISON.

5 MR. GORDON: JUDGE, I THINK THERE'S ONE FACTUAL ERROR IF
6 I MAY. THE ENHANCEMENT OF FOUR MONTHS SHOULDN'T BE DOUBLED.

7 THE COURT: I ASKED YOU TO TAKE A LOOK AT THAT.

8 MR. GORDON: I ANSWERED THE QUESTION IN THE SUCCESSOR
9 BRIEF THAT YOU HAVE FILE STAMPED OCTOBER 3. ON THE VERY FIRST
10 PAGE, I TALK ABOUT THE ENHANCEMENT OF THE KNIFE IS LIMITED TO
11 ONE-THIRD THE TERM THEREOF, AND THAT FIGURE IS NOT TO BE
12 DOUBLED. THE CASE LAW IS SET OUT. I'M SURE COUNSEL DOESN'T
13 DISAGREE.

14 THE COURT: THANK YOU.

15 TOTAL TERM IS 27 YEARS, FOUR MONTHS STATE PRISON, \$600
16 TO THE VICTIM'S INDEMNITY FUND. \$600 PAROLE REVOCATION FINE,
17 WHICH UNDER PENAL CODE SECTION 1202.45 I HEREBY STAY.
18 DEFENDANT SHALL RECEIVE CREDIT FOR 564 DAYS ACTUAL TIME SPENT
19 IN CUSTODY, PLUS 84 DAYS SAGE CREDIT, WHICH IS CALCULATED AT 15
20 PERCENT OF THE 564 FOR A TOTAL OF 648 DAYS.

21 MR. BRASS: WHAT WAS THE SAGE AGAIN, YOUR HONOR?

22 THE COURT: 84.

23 MR. BRASS: I HAVE 574 FROM 3-13-99 TO 10-6.

24 THE COURT: GO OFF THE RECORD.

25 (DISCUSSION OFF THE RECORD.)

26 THE COURT: IT TURNS OUT THE PRESENTENCE REPORT APPEARS
27 WRONG. IT HAS HIM ARRESTED ON THE 23RD OF MARCH, 1999. PEOPLE
28 SAY HE WAS ARRESTED ON THE 14TH; IS THAT RIGHT?

1 MR. GORDON: LET ME CHECK THAT VERY QUICKLY PLEASE.

2 HE WAS, IN FACT, ARRESTED BY OFFICER THOMAS HORAN
3 (PHONETIC), 23 MARCH. THE LAST INCIDENT WAS ON 14 MARCH. THE
4 ARREST OVER IN THE ALLEY IN THE CAR WAS 23.

5 THE COURT: MY CALCULATION IS CORRECT. 564 DAYS ACTUAL.
6 84 SAGE, TOTAL OF 648. AS FAR AS THE SENTENCE IS CONCERNED,
7 HAVE I GOT EVERYTHING IN THE SENTENCE? IS THAT RIGHT, COUNSEL?

8 MR. GORDON: I THINK THE SENTENCE IS ACCURATE. WE JUST
9 NEED APPELLATE RIGHTS.

10 THE COURT: AND PAROLE RIGHTS. DID I GET EVERYTHING TO
11 FILL IN ALL THE BLANKS ON YOUR FORM?

12 THE CLERK: I THINK I LOST IT SOMEWHERE. I ONLY HAVE 25
13 YEARS.

14 THE COURT: COUNT ONE IS NINE YEARS, TIMES TWO. COUNT
15 TWO IS ONE-THIRD THE MID TERM, WHICH IS ONE-THIRD DOUBLED,
16 WHICH IS TWO YEARS, PLUS FOUR MONTHS FOR THE KNIFE. COUNT 3 IS
17 ONE-THIRD THE MID TERM DOUBLED, WHICH IS TWO MORE YEARS, AND
18 THEN THE 667(A), FIVE-YEAR MANDATORY ENHANCEMENT IS FIVE YEARS.
19 NOW, WHAT DO YOU GET?

20 MR. BRASS: WE HAVE A QUESTION? MR. MORRIS HAD A
21 QUESTION? AND HE MAKES A GOOD LEGAL POINT. THE FIVE YEAR
22 ENHANCEMENT, PLUS USING IT AS A STRIKE?

23 THE COURT: IS THE LAW.

24 MR. BRASS: OBVIOUSLY, THE COURT HAS ALREADY MADE UP
25 IT'S MIND. WE WOULD LIKE THAT NOTED FOR THE RECORD.

26 THE COURT: HE MAY VERY WELL HAVE APPELLATE POINT. AS
27 THE LAW SITS RIGHT NOW, THAT IS THE LAW.

28 MR. BRASS: IF WE COULD OBJECT THEN TO PERFECT THAT FOR

1 THE RECORD. WE WILL BE FILING AN APPEAL.

2 THE COURT: AT THE EXPIRATION OF YOUR PERIOD OF
3 INCARCERATION, YOU WILL BE PLACED ON PAROLE FOR A PERIOD NOT TO
4 EXCEED 48 MONTHS, UNLESS WAIVED FOR GOOD CAUSE BY THE BOARD OF
5 PRISON TERMS. IF YOU VIOLATE ANY PROVISION OF YOUR PAROLE
6 GRANT, YOUR PAROLE MAY BE REVOKED. YOU COULD BE INCARCERATED
7 FOR A PERIOD NOT TO EXCEED 12 MONTHS IN EACH INSTANCE OF
8 REVOCATION. THE TOTAL TIME SPENT IN CUSTODY DUE TO THE
9 REVOCATION OF PAROLE AND LIMIT OF PAROLE ITSELF MAY NOT EXCEED
10 48 MONTHS.

11 SIR, DO YOU UNDERSTAND WHAT I JUST EXPLAINED?

12 THE WITNESS: YES, YOUR HONOR.

13 THE COURT: IT IS NOW MY DUTY TO ADVISE YOU OF YOUR
14 APPEAL RIGHTS. YOU HAVE AN ABSOLUTE RIGHT TO APPEAL FROM THE
15 JUDGMENT OF THIS COURT IN IMPOSING SENTENCE ON YOU TODAY. THIS
16 MEANS, IF YOU WISH TO APPEAL, YOU MUST FILE A WRITTEN NOTICE OF
17 YOUR INTENTION TO APPEAL WITHIN 60 DAYS OF TODAY. THE NOTICE
18 MUST BE IN WRITING AND SIGNED BY YOU OR YOUR ATTORNEY OR BOTH
19 OF YOU. IT MUST SPECIFY WHAT IT IS YOU'RE APPEALING FROM,
20 WHETHER IT IS THE WHOLE JUDGMENT OR ONLY PART OF IT.

21 IF YOU DO APPEAL, YOU WILL HAVE THE RIGHT TO A COMPLETE
22 TRANSCRIPT OF THE TRIAL COURT PROCEEDINGS BY LAW, WITHOUT ANY
23 COST TO YOU. IF YOU APPEAL AND CANNOT AFFORD AN ATTORNEY TO
24 REPRESENT YOU, THE APPELLATE AUTHORITIES WILL APPOINT ONE FOR
25 YOU. IT IS YOUR OBLIGATION TO KEEP THE APPELLATE AUTHORITIES
26 INFORMED AT ALL TIMES OF YOUR CURRENT MAILING ADDRESS, SO THAT
27 THEY CAN BE IN TOUCH WITH YOU ABOUT YOUR APPOINTED COUNSEL.
28 SIR, DO YOU UNDERSTAND WHAT I JUST EXPLAINED TO YOU?

1 THE DEFENDANT: YES, YOUR HONOR.

2 THE COURT: ANYTHING FURTHER?

3 MR. BRASS: NO.

4 THE COURT: MR. MORRIS, I TRULY WISH YOU GOOD LUCK. I
5 THOUGHT A LOT ABOUT THIS CASE. AND AS I SAID, I WISH YOUR LIFE
6 HAD BEEN DIFFERENT FOR ALL OF THOSE FINE PEOPLE WHO ARE AROUND
7 YOU, FOR ALL THOSE FINE PEOPLE WHO YOU PUT YOURSELF AROUND AND
8 COMMITTED CRIME AGAINST. GOOD LUCK TO YOU, SIR. THANK YOU.

9 (WHEREUPON, THE COURT WAS ADJOURNED.)
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PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, MARLON MORRIS, am over the age of eighteen (18) years, and I (am) (am not) a party to the within cause of action. My address is: P-96526

CSP-SACRAMENTO

P.O. Box 290066

Represa, CA 95671-0066

On, May 17, 2007, I served the following documents:

PETITION FOR WRIT OF HABES CORPUS TO OFFICE OF THE CLERK OF THE SAN FRANCISCO
COUNTY SUPERIOR COURT. REQUESTING RESENTENCING UNDER Cunningham v. California,
549 U.S. (2007).

on the below named individual(s) by depositing true and correct copies thereof in the United State mail in Represa, California, with postage fully prepaid thereon, addressed as follows:

1. OFFICE OF THE CLERK

SUPERIOR COURT

400 McAllister St.

San Francisco, CA 94102

2. _____

I have read the above statements and declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of MAY, 2007, at California State Prison - Sacramento, Represa, California.

(Signature)

Marlon Morris

MARLON MORRIS
P-96526, CSP-SACRAMENTO
P.O. Box 290066
Represa, CA 95671-0066

May 17, 2007

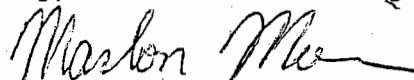
OFFICE OF THE CLERK
Superior Court
400 McAllister Street
San Francisco, CA 94102

Dear Clerk:

Enclosed are one original copy of my petition for writ of habeas corpus with a one copy of the cover sheet of the petition . Please endorse the cover sheet and return it to me for my file. I have enclosed one SASE for you to return my copy.

I thank you in advance for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Marlon Morris". The signature is written in dark ink and is positioned above the typed name.

MARLON MORRIS
Petitioner Pro Se

COPY OF ORDER FROM SUPERIOR COURT OF JULY 23, 2007
NO. 5597 exhibit B.

ENDORSED
FILED
San Francisco County Superior Court

JUL 23 2007

GORDON PARK-LI, Clerk
BY: CARLOS BARRAZA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

Department No. 22

IN THE MATTER OF THE APPLICATION)
OF)
MARLON MORRIS) WRIT NO. 5597
Petitioner,) ORDER
FOR A WRIT OF HABEAS CORPUS)

On May 25, 2007 this Court received a petition for writ of habeas corpus ("Petition") from Marlon Morris ("Petitioner").

On October 6, 2000, a jury convicted Petitioner of one count of carjacking [Penal Code section 215] and two counts of second-degree robbery [Penal Code section 212.5]. The jury also found true, with respect to one of the robbery counts, an enhancement pursuant to Penal Code section 12022(b) and allegations of a prior conviction for robbery [Penal Code sections 667(a)(1), (d), (e); 1170.12(b)(c) and 667.5(b)]. The court sentenced Petitioner to prison for a total term of 27 years and four months. On September 9, 2002, the First District Court of Appeal affirmed the conviction. On November 11, 2002, the California Supreme Court

1 denied review.

2 Petitioner asks the Court to modify his sentence in accordance
3 with *Cunningham v. California* (Jan. 22, 2007) 127 S.Ct. 856, ___
4 U.S. ___. In *Apprendi v. New Jersey* (2000) 530 U.S. 466, 489-90,
5 the Supreme Court held that any fact that increases the penalty for
6 a crime beyond the prescribed statutory maximum must be submitted
7 to a jury and proved beyond a reasonable doubt. In *Blakely v.*
8 *Washington* (2004) 542 U.S. 296, 303, the Supreme Court explained
9 that "the statutory maximum for *Apprendi* purposes is the maximum
10 sentence a judge may impose solely on the basis of the facts
11 reflected in the jury verdict or admitted by the defendant." (542
12 U.S. at 303.) Most recently, in *Cunningham*, the Supreme Court -
13 citing *Apprendi* and *Blakely* - held that California's Determinate
14 Sentencing Law violates a defendant's right to a jury trial to the
15 extent it permits a trial court to impose an upper term based on
16 facts found by the court rather than by a jury.

17 Petitioner's reliance on *Cunningham* is unavailing because his
18 conviction was final before *Blakely* was announced. (Petition at
19 5:10.) California courts have held that the rule announced in
20 *Blakely* is not retroactive and does not apply to cases that were
21 final when *Blakely* was announced. (See, e.g., *People v. Amons*
22 (2005) 125 Cal.App.4th 855, 864 [*Blakely* did not apply
23 retroactively to defendant's upper term sentencing that was already
24 final when decision was issued]; *In re Consiglio* (2005) 128
25 Cal.App.4th 511, 514 [same; citing *Amons*].) Because Petitioner's
conviction became final before *Blakely* and because the decision in
Cunningham depended on the rule announced in *Blakely*, this Court
finds that *Cunningham* does not apply retroactively to Petitioner's
conviction.

For the foregoing reasons, the Petition is DENIED.

7/18/07
Date

Judge of the Superior Court

PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, MARLON MORRIS, am over the age of eighteen (18) years,
and I (am) (am not) a party to the within cause of action. My address is: P-
P-96526

CSP-SACRAMENTO

P.O. Box 290066

Represa, CA 95671-0066

On, 2007, I served the following documents:

PETITION FOR WRIT OF HABEAS CORPUS, FOR REVIEW OF THE LOWER COURT'S
DECISION.

on the below named individual(s) by depositing true and correct copies thereof in
the United State mail in Represa, California, with postage fully prepaid thereon,
addressed as follows:

OFFICE OF THE CLERK

1. California Court of Appeal
First Appellate
350 McAllister Street
San Francisco, CA 94102

2. _____

I have read the above statements and declare under the penalty of perjury of
the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 2007, at California State
Prison - Sacramento, Represa, California.

(Signature) _____

In re MARLON MORRIS, On Habeas Corpus NOS. (super. ct. No. 178974, Court of Appeal #A118974.

ORDER FROM COURT OF APPEAL OF SEPTEMBER 6th, 2007,
EXHIBIT B.

A118974

Marlon Morris
CDC:P-96526
CSP Sacramento
P.O. Box 290066
Represa, CA 95671-0066

NOTICE

Please include both the appellate case number and the division number on any written communication or filing submitted to this court.

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COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 1

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COURT OF APPEAL FIRST APPELLATE DISTRICT

SEP 06 2007

DIANA HERBERT, CLERK

BY _____ DEPUTY CLERK

In re MARLON MORRIS on Habeas Corpus.

A118974

San Francisco County No. 175064

BY THE COURT:

The petition for writ of habeas corpus is denied.

The justices participating in this matter were:

Acting Presiding Justice Stein and Justice Swager

Date: SEP - 6 2007

STEIN, J.

Acting P.J.

PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, MARLON MORRIS, am over the age of eighteen (18) years,
and I (am) (am not) a party to the within cause of action. My address is:

P-96526

CSP-SACRAMENTO

P.O. Box 290066

Represa, CA 95671-0066

On, 9-24 2007, I served the following documents:

PETITION FOR WRIT OF HABEAS CORPUS.

on the below named individual(s) by depositing true and correct copies thereof in
the United State mail in Represa, California, with postage fully prepaid thereon,
addressed as follows:

1. OFFICE OF THE CLERK

Supreme Court

State of California

350 McAllister Street

San Francisco, CA 94102

2. _____

I have read the above statements and declare under the penalty of perjury of
the laws of the State of California that the foregoing is true and correct.

Executed this 24th day of September, 2007, at California State
Prison - Sacramento, Represa, California.

(Signature)

Marlon Morris

PROOF OF SERVICE

(C.C.P. §§1013(a); 2015.5; 28 U.S.C. §1746)

I, Marlon Morris, am over the age of eighteen (18) years,
and I (am) (am not) a party to the within cause of action. My address is: P-96526

CSP-SACRAMENTO
P.O. Box 290066
Represas, CA 95671-0066

On, 2008, I served the following documents:

Petition For writ of Habeas Corpus
Morris vs. Walker, Warden, et al.

on the below named individual(s) by depositing true and correct copies thereof in
the United State mail in Represa, California, with postage fully prepaid thereon,
addressed as follows:

1. <u>OFFICE OF THE CLERK</u>	2. _____
<u>U.S. District Court</u>	_____
<u>N.D. California</u>	_____
<u>450 Golden Gate Ave.</u>	_____
<u>San Francisco, CA 94102</u>	_____

I have read the above statements and declare under the penalty of perjury of
the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of April, 2008, at California State
Prison - Sacramento, Represa, California.

(Signature) Marlon Morris

